IN THE HIGH COURT OF BOMBAY AT GOA
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APPEAL FROM ORDER NO. 47 OF 2002

1. Shri Mohandas Naik Bhagat, s/o late Govind Bhagat,aged 50 years, married, occupation service and his wife

2. Smt. Sumitra M. Naik Bhagat, d/o Govind Desai, aged 47 years, housewife. Both r/o H.No.563, Bhagatwada-Nagarcem, Canacona, Goa, through their power-of-attorney, Shri Ulhas G.N. Bhagat, r/o Bhagatwada-Nagarcem, Canacona, Goa. ... Appellants.

Versus

1. Shri Katu Paik Vagonkar, s/o Paik Vagonkar, major in age, agriculturist, Shristal Panchayat, Chapoli Vaddo, House No. not known, near Primary School Chapoli, Chapoli, Canacona, Goa,

2. Shri Laxman Zorgo Vagonkar, s/o Zorgo Vagonkar, agriculture, major in age, H. No. not known, Shristal Panchayat, Chapoli vaddo, Near Primary School, Chapoli, Canacona, Goa,

3. Shri Kanta Molu Vagonkar, s/o Molu Vagonkar, major in age, agriculturst, r/o H. No. not known, Shrista Panchayat, Chapoli Vaddo, Near Primary School, Chapoli, Canacona, Goa,

4. Shri Anil Babani Vagonkar, s/o Babani Vagonkar, major in age, agriculture, Shristal Panchayat, Chapoli vaddo, r/o H. No. not known, Chapoli, Near Primary School, Chapoli,

Canacona, Goa,

5. Shri Ram Shanu Vagonkar,
s/o Shanu Vagonkar, major
in age, agriculture, Shristal
Pachayat, Chjapoli, r/o H.No.
not known, Chapoli, Near
Primary School, Chapoli,
Canacona, Goa,

6. Shri Kamlekar Puno Vagonkar,
s/o Puno Vagonkar, major
in age, agriculture, Shristal
Panchayat, Chapoli Vaddo, r/o
H.No. not known, Chapoli,
Near Primary School,
Chapoli, Canacona, Goa,

7. Shri Sudhakar Sonu Vagonkar,
s/o Sonu Vagonkar, major
in age, agricuturist, Shristal
Panchayuat, Chapoli Vaddo, r/o
H. No. not known, Chapoli,
Near Primary School, Chapoli,
Canacona, Goa, and

8. Shri Tolu Tambdo Vagonkar,
s/o Tambdo Vagonkar, major
in age, service, Shristal
Panchayat, Chapoli Vaddo, r/o H.No.
not known, Chapoli, Near
Primary School, Chapoli,
Canacona, Goa. ... Respondents.

Shri S. G. Dessai, Senior Advocate with Shri Mandar Shirodkar, advocate for the appellants.

Shri Sudin Usgaokar, advocate for the respondents.

CORAM : F. I. REBELLO, J.

DATE : 13th June, 2003.

ORAL ORDER

The appellants herein are the original plaintiffs in Special Civil Suit No.78/2001/A. The case of the appellants was that they had purchased property which included survey no.63/1. The respondents contended that they had no right to the property. The respondents started interfering with the

appellants' possession in the other part of the property which they had purchased and which was bearing part of survey no.63/1, which was a larger property. It is in these circumstances that the appellants herein sought an application for temporary injunction.

The respondents contested the case of the plaintiffs/appellants herein. It was their contention that insofar as survey 63/1 concerned they had no right to the property. It was the further contention that the original survey no.63/1 was showing their names and the names of some other persons in the occupants' column. Some of these occupants filed proceedings to get their property separately demarcated pursuant to which the matter was sent back by the authorities under the Land Revenue Code. The further case is that the names of the appellants herein nor their predecessors-in-title Nagarcenkar were in the record. Contra to this, the contention of the appellants was that they had filed a suit against one Raikar, whose name was shown in the survey records. Nagarcenkar had filed a suit against Raikar on the ground that part of the property was shown in the name of Raikar. Raikar did not contest the suit. The respondents admitted the claim and consequently the suit was decreed.

2. The learned trial Court after considering the evidence on record found that the appellants herein had failed to make out a case of possession and in these circumstances,

dismissed the application for temporary injunction.

3. When the matter came up before this Court, a learned Judge of this Court passed and order to appoint a Commissioner. The Commissioner was appointed and there are reports submitted by the Commissioner. From the reports of the Commissioner, both the parties agree that it is not possible to spell out as to who was in possession.

4. The real issue would be whether on the facts of this case and appreciation of evidence by the trial Court, it is open to this Court to set aside the order on the ground that the appellants have proved exclusive possession. One of the main considerations for grant of injunction in such manner is that apart from showing title to the property, the appellant must also show exclusive possession. In the instant case, no doubt there are triable issues and, as such, it can be said that prima facie case has been made out. Insofar as issue of possession is concerned, evidence led by the appellants has been examined by the trial Court. The trial Court has found that the appellants herein, though purchased the property from Nagarcenkar, yet made no attempt whatsoever to get his name recorded in the survey records. The other aspect was that the appellants herein were found cultivating the paddy portion. Considering that cultivation, the trial Court found that the appellants were not able to show that they were in possession of the suit property.

5. In my opinion, considering the material on record, the trial Court has examined the record. It is not possible to say that the view taken by the trial Court was a view possible being taken. Once that is the case it would not be proper for this Court to substitute its own view for that of the trial Court. The view taken is a probable and possible view. Having said so, in my opinion, this would not be a fit case to interfere with the order of the trial Court, considering that the issue is mainly of appreciation of evidence. At the same time however, the respondents will have to be restrained from changing the nature of the suit property and as such, the respondents will have to be restrained from alienating, transferring or creating third party rights in respect of the suit property.

6. Hence the following Order:-

The Order of 21st March, 2002, of the Civil Judge, Senior Division, Margao, is not interfered with. The respondents, their servants or agents or any person claiming through them are restrained, pending the hearing and final disposal of the suit, from transferring, alienating or creating any third party rights or changing the nature of the suit property, except for cultivation, pending the hearing and final disposal of the suit. The trial court is directed to

dispose of the suit on or before 30th June, 2004.

The Appeal stands disposed off accordingly.

F. I. REBELLO, J.

mc.